

## Branigan, Terence

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**From:** Branigan, Terence  
**Sent:** Monday, November 14, 2016 12:55 PM  
**To:** Cooney, Nigel (ENRD); Bahr, Ryan  
**Cc:** Kuefler, Patrick; Toney, Marcy; Bajor, John  
**Subject:** RE: Communications with IDEM re the City of Jeffersonville  
**Attachments:** CD.pdf

CONFIDENTIAL  
ATTORNEY CLIENT PRIVILEGE

Hi Nigel,

Exemption 5 Deliberative Process; Attorney Client



Exemption 5 Deliberative Process; Attorney Client



Thanks!

Terry

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**To:** Branigan, Terence <Branigan.Terence@epa.gov>; Bahr, Ryan <bahr.ryan@epa.gov>  
**Cc:** Kuefler, Patrick <kuefler.patrick@epa.gov>; Toney, Marcy <toney.marcy@epa.gov>; Bajor, John <bajor.john@epa.gov>  
**Subject:** RE: Communications with IDEM re the City of Jeffersonville

Exemption 5 Deliberative Process; Attorney Client



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**From:** Branigan, Terence [mailto:Branigan.Terence@epa.gov]  
**Sent:** Thursday, November 10, 2016 2:21 PM  
**To:** Bahr, Ryan <bahr.ryan@epa.gov>; Cooney, Nigel (ENRD) <NCooney@ENRD.USDOJ.GOV>  
**Cc:** Kuefler, Patrick <kuefler.patrick@epa.gov>; Toney, Marcy <toney.marcy@epa.gov>; Bajor, John <bajor.john@epa.gov>  
**Subject:** Communications with IDEM re the City of Jeffersonville

Ryan and Nigel,

Exemption 5 Deliberative Process; Attorney Client



Exemption 5 Deliberative Process; Attorney Client

Thanks!

Terry

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**From:** Bahr, Ryan  
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**Subject:** RE: Communications with IDEM re the City of Jeffersonville

Exemption 5 Deliberative Process; Attorney Client

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**From:** Branigan, Terence  
**Sent:** Thursday, November 10, 2016 1:09 PM  
**To:** Bahr, Ryan <[bahr.ryan@epa.gov](mailto:bahr.ryan@epa.gov)>  
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**Subject:** Communications with IDEM re the City of Jeffersonville

CONFIDENTIAL  
Attorney Client Privileged

Hi Ryan,

Exemption 5 Deliberative Process; Attorney Client

Best,

Terry

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**From:** Bahr, Ryan

**Sent:** Thursday, November 10, 2016 12:47 PM

**To:** HANCOCK, MARC <[MHANCOCK@idem.IN.gov](mailto:MHANCOCK@idem.IN.gov)>; VOSS, LEIGH <[LVOSS@idem.IN.gov](mailto:LVOSS@idem.IN.gov)>; Riddle, G. Lynn <[GRiddle@idem.IN.gov](mailto:GRiddle@idem.IN.gov)>; ADMIRE, BETH <[BADMIRE@idem.IN.gov](mailto:BADMIRE@idem.IN.gov)>; Higginbotham, Paul <[PHIGGINB@idem.IN.gov](mailto:PHIGGINB@idem.IN.gov)>; Novak, Paul <[PNovak@idem.IN.gov](mailto:PNovak@idem.IN.gov)>; Dittmer, Jerry <[JDITTMER@idem.IN.gov](mailto:JDITTMER@idem.IN.gov)>

**Cc:** Branigan, Terence <[Branigan.Terence@epa.gov](mailto:Branigan.Terence@epa.gov)>; Kuefler, Patrick <[kuefler.patrick@epa.gov](mailto:kuefler.patrick@epa.gov)>; Cooney, Nigel (ENRD) <[Nigel.Cooney@usdoj.gov](mailto:Nigel.Cooney@usdoj.gov)>; Bajor, John <[bajor.john@epa.gov](mailto:bajor.john@epa.gov)>

**Subject:** RE: Conference Call, Monday October 17, 11:30 AM CST, Jeffersonville, In.

Thank you everyone for the call that we had to discuss Jeffersonville's/Scott Chinn's letter to IDEM.

On our call, we decided to ask via letter that Jeffersonville clarify its request. In particular, it was not entirely clear if they were asking for an extension or to also revisit controls. They also did an FCA assessment of the current schedule but did not do an FCA of their requested schedule.

As agreed to on the call, we drafted the attached letter. Please let us know what comments that you have on the letter. After reviving your comments, we can finalize the draft and send it back to you all to route for signature. We were not sure who would sign at IDEM and left that for you all to fill in. Pat Kuefler is the signature for EPA. Terry checked with Nigel and Nigel was okay having this letter come from EPA and IDEM.

Please provide your comments by the 17<sup>th</sup> and let us know if you have any questions.

-Ryan (312-353-4366) and Jack (312-353-4633)

---

**From:** HANCOCK, MARC [<mailto:MHANCOCK@idem.IN.gov>]

**Sent:** Friday, October 14, 2016 12:07 PM

**To:** Bajor, John <[bajor.john@epa.gov](mailto:bajor.john@epa.gov)>; VOSS, LEIGH <[LVOSS@idem.IN.gov](mailto:LVOSS@idem.IN.gov)>; Riddle, G. Lynn <[GRiddle@idem.IN.gov](mailto:GRiddle@idem.IN.gov)>; ADMIRE, BETH <[BADMIRE@idem.IN.gov](mailto:BADMIRE@idem.IN.gov)>

**Cc:** Branigan, Terence <[Branigan.Terence@epa.gov](mailto:Branigan.Terence@epa.gov)>; Kuefler, Patrick <[kuefler.patrick@epa.gov](mailto:kuefler.patrick@epa.gov)>; Bahr, Ryan <[bahr.ryan@epa.gov](mailto:bahr.ryan@epa.gov)>; Cooney, Nigel (ENRD) <[Nigel.Cooney@usdoj.gov](mailto:Nigel.Cooney@usdoj.gov)>; HOUSE, JASON <[JAHOUSE@idem.IN.gov](mailto:JAHOUSE@idem.IN.gov)>; Novak, Paul <[PNovak@idem.IN.gov](mailto:PNovak@idem.IN.gov)>; Higginbotham, Paul <[PHIGGINB@idem.IN.gov](mailto:PHIGGINB@idem.IN.gov)>; Dittmer, Jerry <[JDITTMER@idem.IN.gov](mailto:JDITTMER@idem.IN.gov)>

**Subject:** RE: Conference Call, Monday October 17, 11:30 AM CST, Jeffersonville, In.



Thanks Jack.

For everyone at IDEM who will be participating, I have Conference Room D reserved for this call.

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**From:** Bajor, John [mailto:bajor.john@epa.gov]  
**Sent:** Friday, October 14, 2016 12:22 PM  
**To:** HANCOCK, MARC; VOSS, LEIGH; Riddle, G. Lynn; ADMIRE, BETH  
**Cc:** Branigan, Terence; Kuefler, Patrick; Bahr, Ryan; Cooney, Nigel (ENRD)  
**Subject:** Conference Call, Monday October 17, 11:30 AM CST, Jeffersonville, In.

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Please use the following Conference Call Number and Code for our meeting next week. This will facilitate participation.

Conference Call In **Exemption 2 Internal Agency Rules**; Conference Code #: **Exemption 2 Internal Agency Rules**

Roo 1517 is reserved for R5 participants.

Marc would you please ensure receipt of this email to all IDEM participants? I think I've got them all from our last discussion.

Please acknowledge receipt of this email.

Regards.

John "Jack" J. Bajor, Jr.  
Environmental Engineer/Enforcement Officer  
Water Division  
Water Enforcement & Compliance Assurance  
USEPA, Region 5  
WC-15J; **Exemption 2 Internal Agency Rules**  
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FILED  
U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION

09 SEP 17 PM 2:13

SOUTHERN DISTRICT  
OF INDIANA  
LAURA A. BRIGGS  
CLERK

UNITED STATES OF AMERICA,

and

THE STATE OF INDIANA,

Plaintiffs,

v.

THE CITY OF JEFFERSONVILLE,  
INDIANA,

Defendant.

**4:09-cv-0125 DFH-WGH**  
C.A. No. 09-\_\_\_\_\_

**CONSENT DECREE**



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U.S. DISTRICT COURT  
INDIANAPOLIS DIVISION

IN THE UNITED STATES DISTRICT COURT  
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**CONSENT DECREE**

## Table of Contents

I. BACKGROUND .....	1
II. PURPOSES .....	2
III. JURISDICTION AND VENUE.....	2
IV. PARTIES BOUND .....	3
V. DEFINITIONS .....	5
VI. COMPLIANCE PROGRAM.....	12
A. NPDES PERMIT COMPLIANCE .....	12
B. REVISIONS TO CSO OPERATIONAL PLAN ("CSOOP") AND IMPLEMENTATION OF THE REVISED, APPROVED CSOOP .....	13
C. MAXIMIZING FLOW AND STORAGE CAPACITY WITHIN THE SEWER SYSTEM, PENDING COMPLETION OF LTCP WORK .....	15
D. FLOW METERING, MONITORING AND RECORDING REQUIREMENTS.....	17
E. LONG TERM IMPROVEMENTS TO THE WWTP AND THE SEWER SYSTEM TO ELIMINATE OR MINIMIZE THE OCCURRENCE, DURATION AND VOLUME OF CSO OVERFLOWS .....	17
F. ELIMINATION OF SANITARY SEWER OVERFLOWS AND DEVELOPMENT AND IMPLEMENTATION OF A SEWER SYSTEM CAPACITY, MANAGEMENT, OPERATION AND MAINTENANCE PROGRAM.....	20
VII. CIVIL PENALTIES.....	21
VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS .....	24
IX. STIPULATED PENALTIES .....	28
X. FORCE MAJEURE .....	37
XI. DISPUTE RESOLUTION .....	39
XII. REPORTING REQUIREMENTS .....	43
XIII. NOTICES AND SUBMISSIONS .....	44
XIV. REVIEW AND APPROVAL PROCEDURES .....	47
XV. ACCESS TO INFORMATION AND DOCUMENT RETENTION .....	49
XVI. FAILURE OF COMPLIANCE.....	51
XVII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS .....	51

XVIII. COSTS.....	53
XIX. EFFECTIVE DATE.....	53
XX. RETENTION OF JURISDICTION .....	54
XXI. MODIFICATIONS .....	54
XXII. TERMINATION.....	55
XXIII. PUBLIC COMMENT.....	56
XXIV. SIGNATORIES/SERVICE.....	56
XXV. INTEGRATION/APPENDICES.....	57
XXVI. FINAL JUDGMENT.....	57



## I. BACKGROUND

A. The United States of America (the "United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("U.S. EPA"), and the State of Indiana, acting at the request of the Indiana Department of Environmental Management ("IDEM"), have filed a Complaint seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, and Ind. Code. 13-30-4-1 and 13-14-2-6, naming as the defendant the City of Jeffersonville, Indiana ("Jeffersonville").

B. The United States' and State of Indiana's Complaint alleges that Jeffersonville violated the CWA, 33 U.S.C. § 1251 *et seq.*, Title 327 of Indiana Administrative Code, Article 5, and its National Pollutant Discharge Elimination System Permit (the "NPDES Permit"), issued pursuant to the CWA and Indiana law, by, *inter alia*: (1) discharging untreated waste water from point sources in Jeffersonville's combined sewer system ("CSS") in a manner which violates the terms and conditions of the NPDES Permit; (2) discharging untreated waste water from point sources in Jeffersonville's separate sanitary sewer system ("SSS") in violation of the CWA's and Indiana's prohibition on sanitary sewer overflows ("SSOs"), 33 U.S.C. § 1311(a), and the terms and conditions of its NPDES permit; and (3) discharging pollutants from the final effluent of the Jeffersonville Wastewater Treatment Plant ("WWTP") at levels exceeding pollutant limits set in the NPDES Permit.

C. Jeffersonville neither admits nor denies the alleged violations described above; however, Jeffersonville agrees to the obligations imposed on it in this Consent Decree.



D. The United States, the State, and Jeffersonville recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issues of fact or law except as provided in Section III, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

## II. PURPOSES

1. The express purposes of the Parties in entering into this Consent Decree are for Jeffersonville to take those steps necessary to bring its Sewer System and WWTP into compliance with the CWA and regulations promulgated thereunder, with Title 327 of the IAC, Article 5, with Jeffersonville's NPDES Permit as effective on the Date of Lodging, and with any subsequent renewals of such permit occurring before the termination of this Consent Decree, by, among other things, complying with the "Nine Minimum Controls" for CSOs, completing the development of and by implementing a comprehensive Long Term Control Plan ("LTCP") for its WWTP and CSS, and developing and implementing a Sewer System Capacity, Maintenance, Operation and Management Program for its entire Sewer System.

## III. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the Parties to this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355 and 1367, and CWA Section 309(b), 33 U.S.C. § 1319(b). The United States' and State of Indiana's Complaint states claims upon which relief may be granted against Jeffersonville under Section 309 of the CWA and

under Title 327 of the IAC, Article 5, for injunctive relief and civil penalties. Authority to bring this action on behalf of the United States is vested in the U.S. Department of Justice ("DOJ") pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

Authority to bring this action on behalf of the State of Indiana is vested in the Office of the Attorney General of Indiana pursuant to 327 IAC 5-2-20 and Ind. Code Sections 4-6-3-2, 13-30-4-1 and 13-14-2-6.

3. Venue is proper in this District pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and 1395(a).

4. For the purposes of this Consent Decree, Jeffersonville waives all objections and defenses that Jeffersonville may have to jurisdiction of the Court or to venue in this District. Jeffersonville shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. For purposes of this Consent Decree, Jeffersonville does not dispute that the United States' and the State of Indiana's Complaint states claims for relief under Section 301(a) and 309(a) of the CWA and under Title 327 of the IAC, Article 5.

#### IV. PARTIES BOUND

5. This Consent Decree applies to and is binding upon the United States, the State and Jeffersonville and any successors, assigns, or other entities or persons otherwise bound by law. In any action to enforce the terms of this Consent Decree, Jeffersonville shall not raise as a defense the failure of its officers, directors, agents, servants, contractors, and/or employees, or any other persons or entities provided for by Fed. R. Civ. P. 65(d), to take any actions necessary to comply with the terms of this Consent Decree.



6. Transfers of Ownership. Jeffersonville shall condition any transfer of ownership of the WWTP and/or the Sewer System, in whole or in part, upon the transferee's agreement: 1) to enter into a modification to this Consent Decree that shall make the terms and conditions of the Consent Decree which apply to the transferred assets, also apply to the transferee, and 2) to petition IDEM for an appropriate NPDES permit modification or transfer. At least sixty (60) Days prior to the projected date for the transfer of ownership, Jeffersonville shall notify U.S. EPA and IDEM in accordance with Section XIII (Notices and Submissions) of this Consent Decree, of the prospective transfer, and shall provide them with: 1) a copy of the draft motion to modify the Consent Decree, 2) the request for an NPDES permit modification or transfer, and 3) information sufficient to demonstrate that the prospective transferee has the technical and financial qualifications to fulfill the relevant Jeffersonville obligations and liabilities under this Consent Decree. If the United States and/or the State of Indiana oppose the motion and the Court finds that the transferee does not have the financial and/or technical ability to assume the relevant Jeffersonville obligations and liabilities under the Decree, Jeffersonville shall not be released from the relevant obligations and liabilities of this Consent Decree.

7. Any future sharing of operational responsibility for the WWTP or Sewer System shall not be effective to relieve Jeffersonville of its obligations under this Decree. Any action taken by a contractor or worker retained to fulfill any of the responsibilities of Jeffersonville under this Consent Decree shall be considered an action of Jeffersonville for the purpose of determining compliance with this Consent Decree.

8. Following the Date of Lodging of this Consent Decree, upon approval by Jeffersonville of any contract relating to work to be performed pursuant to this Consent Decree,

Jeffersonville shall provide a copy of this Consent Decree to each firm retained to perform that work. For firms already retained by Jeffersonville to perform work under this Decree prior to the Date of Lodging, Jeffersonville shall provide a copy of this Consent Decree no later than thirty (30) Days after the Date of Lodging. Jeffersonville shall condition any such contract upon performance of the work in conformity with the terms of the Consent Decree. Any action taken by a contractor or consultant retained to fulfill any of the responsibilities under this Consent Decree shall be considered an action of Jeffersonville for purposes of determining compliance with this Consent Decree.

#### V. DEFINITIONS

9. Unless otherwise defined herein, terms used in this Consent Decree (and any attachments thereto) that are defined in the CWA, 33 U.S.C. §§ 1251, *et seq.*, or in the federal regulations promulgated thereunder shall have the meaning prescribed therein. Any terms not defined in the CWA, its regulations, or in this Consent Decree, that are defined in Title 327 of the IAC, Article 5 shall have the meaning prescribed therein. Whenever the following terms are used in this Consent Decree, the following definitions shall apply:

- a. "Achievement of Full Operation" and "Achieve Full Operation" shall mean, for the CSO Control Measures, completion of the following:
  - i. construction and installation of equipment or infrastructure;
  - ii. development and implementation of new or modified operational procedures;
  - iii. startup and shakedown of equipment, infrastructure and/or operational procedures; and



iv. preparation of operations and maintenance manuals;

such that the Control Measures are expected to function and perform as designed and have been accepted by the City from its construction contractors. This term specifically includes all control systems and instrumentation necessary for normal operations and all residuals handling systems. Where CSO Control Measures consist of separate components, "Achievement of Full Operation" shall not be achieved until the last component is completed and operational.

b. "Building/Property Backup" means a wastewater release and backup into a building or onto property that is caused by blockages, flow conditions, or other conditions in the Sewer System. A wastewater backup or release that is caused solely by conditions in a Private Service Connection Lateral is not a Building/Property Backup for purposes of this Consent Decree.

c. "Combined Sewer Overflow Control Policy" or "CSO Control Policy" shall mean the U.S. EPA policy found at 59 Fed. Reg. 18688 (April 19, 1994).

d. "Combined Sewer Overflow Discharge" or "CSO Discharge" shall mean any Discharge from Jeffersonville's Combined Sewer System at any point prior to the headworks of the WWTP, including but not limited to any of the designated Outfalls identified in Attachment A to the Jeffersonville NPDES Permit in effect at the time of the Discharge.

e. "Combined Sewer System" or "CSS" shall mean the collection and conveyance system (including all pipes, Force Mains, Gravity Sewer Segments, overflow structures, regulators, Pump Stations, manholes, and components thereto) designed and constructed to collect and convey municipal sewage (domestic, commercial and industrial) and storm water through a single-pipe system to Jeffersonville's Wastewater Treatment Plant ("WWTP") or to

combined sewer overflow structures located in its CSS. This term also includes any facilities constructed pursuant to any CSOOP or LTCP applicable to the CSS.

f. "Complaint" shall mean the joint complaint filed by the United States and the State of Indiana in this action.

g. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXV).

h. "CSO Control Measures" shall mean the physical and/or operational measures, as set forth in the approved Long Term Control Plan Report, to eliminate, treat or otherwise control CSO Discharges that are to be constructed, operated, or otherwise implemented.

i. "CSO Operation Plan" or "CSOOP" shall mean the plan to be revised by Jeffersonville and submitted to U.S. EPA and IDEM pursuant to Paragraph 12 of this Consent Decree, and which shall explain what steps Jeffersonville is taking or has taken to comply with the Nine Minimum Controls.

j. "CSO Outfall" shall mean an Outfall identified in Attachment A to the NPDES Permit that Discharges from the CSS.

k. "Date of Lodging" is the date that the United States lodges a fully executed copy of this Consent Decree with the Court, prior to noticing this Decree in the Federal Register.

l. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

m. "Defendant" shall mean the City of Jeffersonville.

- n. "Discharge" shall mean any "discharge of a pollutant" as defined in 40 C.F.R. § 122.2.
- o. "Dry Weather CSO Discharge" shall mean any Discharge or release from any portion of the CSS that consists of non-precipitation related flows, which may include, without limitation, the combination of domestic sewage, groundwater infiltration, and commercial and industrial wastewaters.
- p. "Effective Date" shall mean the date of entry of this Decree by the Court after satisfaction of the public notice and comment procedures of 28 C.F.R. § 50.7.
- q. "Force Main" shall mean any pipe that receives and conveys wastewater under pressure from the discharge side of a pump.
- r. "Gravity Sewer Segment" or "Sewer Segment" shall mean any pipe that receives, contains and conveys wastewater not normally under pressure, but which is intended to flow unassisted under the influence of gravity.
- s. "IDEM" shall mean the Indiana Department of Environmental Management and any successor departments or agencies of the State.
- t. "Jeffersonville" or "City" shall mean the City of Jeffersonville, Indiana.
- u. "Long Term Control Plan" or "LTCP" shall mean the plan under development by Jeffersonville in accordance with Section II, Subpart C of the CSO Control Policy and this Consent Decree.
- v. "Maximum Peak Treatable Flow" shall mean the flow rate identified in Jeffersonville's current approved CSOOP that is the maximum flow rate at which all treatment units present at the WWTP can treat wastewater for a three hour period, without causing



violations of final effluent limits of the NPDES Permit or otherwise impairing the WWTP's ability to continue receiving and treating wastewater flows to achieve NPDES permit limits and conditions. As of the Date of Lodging, the Maximum Peak Treatable Flow for the WWTP on a 3-hour basis, converted to units of MGD, is 25 MGD.

w. "Maximum Sustained Treatable Flow" shall mean the flow rate identified in Jeffersonville's current approved CSOOP that is the maximum flow rate at which all treatment units present at the WWTP can treat wastewater on a 24-hour basis, without causing violations of final effluent limits of the NPDES Permit or otherwise impairing the WWTP's ability to continue receiving and treating wastewater flows to achieve NPDES permit limits and conditions. As of the Date of Lodging, the Maximum Sustained Treatable Flow for the WWTP on a 24-hour basis is 21.1 MGD.

x. "MGD" shall mean million gallons per day.

y. "Nine Minimum Controls" shall mean the nine minimum controls on CSOs enumerated in Section II, Subsection B of the CSO Control Policy.

z. "NPDES Permit" shall mean Jeffersonville's National Pollutant Discharge Elimination System permit numbered IN0023302 (expiration date November 30, 2011), or any reissued or modified NPDES permits that succeed this permit and are in effect at any time after the Effective Date of this Consent Decree, and prior to its termination pursuant to Section XXII of this Decree (Termination).

aa. "Outfall" shall mean a "point source" (as that term is defined in Section 501(14) of the CWA, 33 U.S.C. § 1361(14)) that serves as a discharge point from Jeffersonville's Sewer



System. Outfall followed by an Arabic numeral shall mean the Outfall assigned that number in Jeffersonville's NPDES permit.

- bb. "Paragraph" shall mean a portion of this Decree identified by an Arabic numeral.
- cc. "Parties" shall mean the United States, the State, and Jeffersonville.
- dd. "Plaintiffs" shall mean the United States and the State.
- ee. "Precipitation" shall mean rainfall, sleet, snow fall, and ice/snow melt.
- ff. "Priority Area" shall include the Indiana portion of the Ohio River between river milemarker 600 and river milemarker 605.5, and is also known as the Indiana portion of the Ohio River from Duffy's Landing downstream to, but not including, the confluence of Cane Run with the Ohio River.
- gg. "Private Service Connection Lateral" shall mean a portion of the Sewer System, not owned by Jeffersonville, used to convey wastewater from a building or buildings to that portion of the Sewer System owned by Jeffersonville.
- hh. "Pump Station" shall mean a facility comprised of pumps which lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that pump station.
- ii. "Receiving Waters" shall mean Cane Run, Mill Creek, and the Ohio River.
- jj. "Revised Maximum Peak Treatable Flow" and "Revised Maximum Sustained Treatable Flow" shall mean, respectively, the Maximum Peak Treatable Flow and the Maximum Sustained Treatable Flow specified by Jeffersonville in its annual CSOOP update pursuant to Paragraph 17 and approved by U.S. EPA and IDEM.

kk. "Sanitary Sewer Discharge" and "SSD" shall mean any Discharge to waters of the State as defined by applicable state law, or waters of the United States as defined by Section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7), from Defendant's Sanitary Sewer System through a point source not specified in any NPDES Permit.

ll. "Sanitary Sewer Overflow" or "SSO" shall mean any Discharge to the waters of the State, as defined by applicable state law, or to waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), from any portion of Jeffersonville's Sanitary Sewer System through any point source not specified or authorized by the NPDES permit, as well as any release of wastewater from Jeffersonville's Sanitary Sewer System to public or private property that does not reach waters of the State or the United States, such as a release to a land surface or into a structure; provided, however, that such releases which are caused solely by conditions in a Private Service Connection Lateral are not SSOs for the purposes of this Consent Decree. As such, the term SSO includes Building/Property Backups caused in whole or in part by conditions in Jeffersonville's Sanitary Sewer System.

mm. "SSO Outfall" shall mean an Outfall identified in Attachment B to the NPDES Permit that Discharges from the SSS.

nn. "Sanitary Sewer System" or "SSS" shall mean all portions of the collection and conveyance system (including all pipes, Force Mains, Gravity Sewer Segments, Pump Stations, manholes, and components thereto), owned by Jeffersonville as of the Date of Lodging of this Consent Decree, which are not part of the CSS and which were designed to convey sanitary waste waters (domestic, commercial and industrial) to a waste water treatment plant ("WWTP").

oo. "Section" shall mean a portion of this Decree identified by a Roman numeral.

pp. "Sensitive Area" shall have the same meaning as that contained in Section ILC.3 of the CSO Control Policy.

qq. "Sewer System" shall mean Jeffersonville's entire sewer collection and conveyance system, including both its CSS and its SSS.

rr. "State" shall mean the State of Indiana, acting on behalf of IDEM.

ss. "United States" shall mean the United States of America, acting on behalf of U.S. EPA, or any successor to U.S. EPA.

tt. "U.S. EPA" shall mean the United States Environmental Protection Agency, or any successor to the United States Environmental Protection Agency.

uu. "Wastewater Treatment Plant" or "WWTP" shall mean the existing wastewater treatment plant owned by Jeffersonville and located at 1420 Pennsylvania Avenue, Jeffersonville, Indiana.

vv. "Wet Weather CSO Discharge" shall mean a CSO Discharge that occurs as the result of a Wet Weather Event and that is not a "Dry Weather CSO Discharge" as defined above.

ww. "Wet Weather Event" shall mean any event of Precipitation of 0.10 inches or greater during any period of twenty-four (24) consecutive hours; however, Precipitation that occurs each consecutive hour after the 24 hour period described above shall be considered part of the same Wet Weather Event.

## VI. COMPLIANCE PROGRAM

### A. NPDES Permit Compliance

10. Permit Compliance. Jeffersonville shall comply with all terms and conditions of its NPDES Permit, the CWA, and Indiana laws and regulations implementing the CWA.



Jeffersonville intends to achieve compliance with its NPDES permit and the CWA, for purposes of this Consent Decree, through the development and, upon approval, implementation of an LTCP and development and implementation of Sewer System Capacity, Management, Operation and Maintenance Program.

11. By the Effective Date of this Consent Decree, Jeffersonville shall have eliminated CSO Outfall 006 (Riverpoint Overflow) and CSO Outfall 012 (Penn Street) such that the Outfalls no longer exist in Jeffersonville's CSS. By December 31, 2009, Jeffersonville shall eliminate CSO Outfall 007 (Clark Street) such that the Outfall no longer exists in Jeffersonville's CSS.

**B. Revisions to CSO Operational Plan ("CSOOP") and Implementation of the Revised, Approved CSOOP**

**12. CSOOP Revisions**

a. Attachment A, Section III.B to Jeffersonville's NPDES Permit requires Jeffersonville to annually evaluate its CSOOP, starting twelve (12) months from the effective date of the NPDES Permit. Within sixty (60) Days after the Effective Date and by September 1<sup>st</sup> of each calendar year thereafter, Jeffersonville shall submit revisions it determines to be necessary to update the CSOOP to U.S. EPA and IDEM pursuant to Section XIII of this Consent Decree (Notices and Submissions). The annual CSOOP revisions shall conform to the requirements of Attachment A, Section III.B. of the NPDES Permit and the CSO Control Policy.

b. Within sixty (60) Days of the Effective Date, Jeffersonville shall revise its CSOOP to include a proposed schedule to annually inspect by closed circuit television the structural integrity of all CSO Outfall pipes, not otherwise eliminated pursuant to its Long Term Control Plan Report approved pursuant to Paragraph 24 of this Consent Decree, at the point

beginning at East Market Street or West Market Street and flowing downstream to the Ohio River, including but not limited to CSO Outfall 008 (Spring Street), CSO Outfall 009 (Wall Street), CSO Outfall 010 (Walnut Street), CSO Outfall 011 (Meigs Street), CSO Outfall 013 (Graham Street), CSO Outfall 018 (Tenth Street Lift Station) and CSO Outfall 021 (Mechanic Street). Within one hundred twenty (120) Days after completion of inspections pursuant to the schedule as approved in accordance with Paragraph 13, below, Jeffersonville shall undertake any repairs or replacements the City determines, based on the results of the inspections, are necessary to maintain the structural integrity of those CSO Outfall pipes. Jeffersonville shall annually submit a revision to its CSOOP pursuant to Subparagraph 12.a. to include the results of the annual inspections and a description of any repairs made to the CSO Outfall pipes during the previous year.

13. Plaintiffs shall review and approve Jeffersonville's current CSOOP and each annual CSOOP revision in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

14. Jeffersonville shall implement the most recently approved CSOOP revision in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

15. No later than forty-five (45) Days after the Effective Date, Jeffersonville shall install a new manhole, to be located in the discharge line leading to CSO Outfall 010 (Walnut Street), at the intersection of Walnut Street and East Riverside Drive, for the purpose of inspecting and conducting any repairs and replacements necessary to maintain the structural integrity of the discharge line for CSO Outfall 010 beginning at East Market Street and flowing downstream to the Ohio River.



**C. Maximizing Flow and Storage Capacity within the Sewer System, Pending Completion of LTCP Work**

**16. Maximum Peak Treatable Flow and Maximum Sustained Treatable Flow.**

a. Jeffersonville shall not Discharge from CSO Outfall 018 during or immediately following a Wet Weather Event until it has maintained the Maximum Peak Treatable Flow at the WWTP for a period of three consecutive hours. After maintaining the Maximum Peak Treatable Flow at the WWTP for a period of three consecutive hours, Jeffersonville shall not Discharge from CSO Outfall 018 at influent flows to the WWTP less than the Maximum Sustained Treatable Flow. Jeffersonville shall comply with all requirements of the NPDES Permit as they relate to any Discharge from CSO Outfall 018 where Jeffersonville has achieved the Maximum Peak Treatable Flow and Maximum Sustained Treatable Flow in accordance with this Paragraph.

b. Within thirty (30) months from the Effective Date, Jeffersonville shall increase the hydraulic capacity of the Tenth Street Pump Station to a minimum capacity of 35 MGD, which will assure that the WWTP is able to receive the Maximum Peak Treatable Flow to the WWTP, the Maximum Sustained Treatable Flow to the WWTP, any Revised Maximum Peak Treatable Flow to the WWTP, and any Revised Maximum Sustained Treatable Flow to the WWTP, prior to a Wet Weather CSO Discharge from CSO Outfall 018, under any pattern of rainfall distribution upon the area served by Jeffersonville's Sewer System. During the 30-month period specified above, Jeffersonville shall not be subject to stipulated penalties for Jeffersonville's failure to comply with Subparagraph 16.a where such noncompliance is the result of receipt of flows at the Tenth Street Pump Station that exceed its existing pumpage capacity of

15.4 MGD before the WWTP receives the Maximum Peak Treatable Flow or the Maximum Sustained Treatable Flow to the WWTP, in accordance with Subparagraph 16.a.

17. Revised Maximum Peak Treatable Flow and a Revised Maximum Sustained Treatable Flow. An amendment to Jeffersonville's NPDES Permit, which became effective April 1, 2009, authorizes Jeffersonville to upgrade its WWTP. Following completion of the upgrade to Jeffersonville's WWTP, Jeffersonville shall revise its CSOOP to reflect a proposed Revised Maximum Peak Treatable Flow and a Revised Maximum Sustained Treatable Flow for the WWTP and shall provide in the CSOOP a detailed explanation for the basis of the proposed Revised Maximum Peak Treatable Flow and Revised Maximum Sustained Treatable Flow. U.S. EPA and/or IDEM shall review the proposed Revised Maximum Peak Treatable Flow and the proposed Revised Maximum Sustained Treatable Flow in accordance with Section XIV of this Consent Decree (Review and Approval Procedures). In accordance with that review, Jeffersonville shall operate the WWTP at the Revised Maximum Peak Treatable Flow and the Revised Maximum Sustained Treatable Flow during all Wet Weather Events.

18. Jeffersonville shall make maximum use of the transport and storage capacity of the Sewer System to minimize the frequency and volume of Wet Weather CSO Discharges. Maximizing storage in the Sewer System includes, among other things, raising regulator settings to the maximum height feasible, modifying catch basins inlets to restrict inflow rates, removing obstructions and sediment accumulations in the Sewer System (including, but not limited to, the Market Street interceptor), and reducing or eliminating other hydraulic restrictions that can be addressed by limited scope point repairs. Maximizing storage at the WWTP would include use



of any inoperative or unused treatment facilities at the WWTP site to store flows pending treatment.

**D. Flow Metering, Monitoring and Recording Requirements**

19. Jeffersonville shall comply with flow metering, monitoring and recording requirements set forth in Appendix C, commencing on the Date of Entry of this Consent Decree.

**E. Long Term Improvements to the WWTP and the Sewer System to Eliminate or Minimize the Occurrence, Duration and Volume of CSO Overflows**

20. Completion of Development of the LTCP and Incorporation of LTCP Report by Reference, Once Approved. In accordance with the requirements of this Subsection V.I.E, Jeffersonville shall complete the development of the LTCP and shall submit the LTCP and LTCP Report required under Paragraph 24 for approval pursuant to Section XIII of this Consent Decree (Notices and Submissions). U.S. EPA and IDEM shall review the proposed LTCP and LTCP Report pursuant to Section XIV of this Consent Decree (Review and Approval Procedures). Once approved, the LTCP Report shall be incorporated by reference and shall become enforceable under this Consent Decree.

21. The LTCP shall provide for the construction and implementation of all improvements to the WWTP and the Sewer System and other measures necessary to either eliminate the occurrence of Wet Weather CSO Discharges, or to minimize the number, duration and/or volume of Wet Weather CSO Discharges, in accordance with the CSO Policy. Any such Wet Weather CSO Discharges that continue to occur following full implementation of the LTCP shall comply with the technology-based and water quality-based requirements of the CWA, state law and regulation, and Jeffersonville's NPDES Permit.



22. Schedule for Preliminary Programs and Studies. Appendix A ("LTCP Schedule")

sets forth the schedule by which Jeffersonville shall complete those actions necessary to obtain approval of the LTCP. Appendix B provides a description of the LTCP report that Jeffersonville shall submit pursuant to the schedule in Appendix A.

23. Preliminary Programs and Studies Reports. Jeffersonville shall submit to the Plaintiffs the following Preliminary Programs and Studies Reports, in accordance with the schedule established in Appendix A and with the requirements in Appendix B: Stream Reach Characterization and Evaluation Report and SRCER Update, and Update to Sewer System Hydraulic Modeling Program (including model calibration and verification). Each report shall summarize all information and data obtained, and the results of all assessments, evaluations, and characterizations carried out in completing the relevant program or study in accordance with the governing Section of Appendix B ("Long Term Control Plan Requirements") and shall describe any deviations from Appendix B in completing the relevant program or study, as well as the justifications for any deviations. Jeffersonville shall use the results of the Preliminary Programs and Studies, as described in the Preliminary Programs and Studies Reports approved by the Plaintiffs, in developing and implementing the LTCP.

24. LTCP Report. After completing the development activities and analyses specified by Section E of Appendix B, Jeffersonville shall submit to the Plaintiffs an LTCP Report in accordance with the plans and schedules established in Appendix A and B that contains the following deliverables: (i) a description of the CSO Control Measures selected by Jeffersonville in its LTCP; (ii) a description of the performance criteria that those CSO Control Measures shall achieve; (iii) a schedule with milestones for design, construction, and implementation of CSO

Control Measures required under the LTCP, including improvements to the WWTP and the Sewer System; (iv) costs projected to be incurred at each of the scheduled design, construction, and implementation milestones; and (v) a description of the Post-Construction Compliance Monitoring Program that shall be implemented upon completion of the construction. The schedule included in the LTCP Report shall require the design, construction, and implementation of all CSO Control Measures selected by Jeffersonville by no later than the dates determined pursuant to Paragraph 25, below.

25. If the Financial Capability Analysis required under Subsection E of Appendix B to this Consent Decree, as approved by U.S. EPA and IDEM pursuant to Section XIV (Review and Approval Procedures), shows that Jeffersonville is a "medium burden" community, then Jeffersonville shall Achieve Full Operation by no later than June 1, 2020. If the Financial Capability Analysis required under Subsection E of Appendix B to this Consent Decree, as approved by U.S. EPA and IDEM pursuant to Section XIV (Review and Approval Procedures), shows that Jeffersonville is a "high burden" community, then Jeffersonville shall Achieve Full Operation by no later than June 1, 2025.

26. LTCP Implementation and Compliance Achievement. Upon approval by the Plaintiffs, Jeffersonville shall implement the CSO Control Measures in its LTCP and the LTCP Report in accordance with the schedule specified in the approved LTCP Report. After Achievement of Full Operation, Jeffersonville shall demonstrate compliance with the performance criteria contained in the LTCP Report, the technology-based and water quality-based requirements of the CWA, state law and regulation, and the applicable provisions of its



NPDES Permit by implementing the Post-Construction Compliance Monitoring Program portion of its approved LTCP Report in accordance with the schedule specified therein.

**F. Elimination of Sanitary Sewer Overflows and Development and Implementation of a Sewer System Capacity, Management, Operation and Maintenance Program.**

27. SSOs are prohibited under the CWA, Title 327 of IAC, Article 5, and Jeffersonville's NPDES Permits. Any SSD shall be deemed a violation of this Paragraph and subject to stipulated penalties under Section IX of this Consent Decree (Stipulated Penalties). Jeffersonville shall eliminate and/or permanently seal the following designed and constructed SSO Outfalls within its SSS within the timeframes listed below:

<b>SSO Outfall</b>	<b>Date by Which Jeffersonville Shall Eliminate and Permanently Seal the SSO Outfall</b>
Artic Springs	6 months from the Effective Date
Mill Creek	12 months from the Effective Date
Spring Street	18 months from the Effective Date

28. Jeffersonville shall prevent the occurrence of SSOs by developing and implementing a Sewer System Capacity, Management, Operation and Maintenance Program for the SSS and submitting such plan to U.S. EPA and IDEM pursuant to Section XIII (Notices and Submissions).

29. Jeffersonville shall develop its Sewer System Capacity, Management, Operation and Maintenance Program to reflect accepted industry practices to: (a) properly manage, operate, and maintain sewer systems; (b) identify and inventory areas in the sewer systems with capacity

constraints; (c) implement measures to ensure adequate capacity throughout the sewer system; and (d) respond to SSO events. EPA's January 2005 "Guide for Evaluating Capacity, Management, Operation and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems" (EPA 305-B-05-002) ("EPA's January 2005 CMOM Guide") shall be considered in determining what constitutes "accepted industry practices" for purposes of this Paragraph. To the extent that Jeffersonville drafts its Sewer System Capacity, Management, Operation and Maintenance Program in a manner that is materially inconsistent with EPA's January 2005 CMOM Guide, Jeffersonville shall identify the material inconsistency in its submission to EPA and IDEM, and explain the basis for its belief that the Sewer System Capacity, Management, Operation and Maintenance Program is nevertheless consistent with accepted industry practices, notwithstanding the material inconsistency.

30. Plaintiffs shall review and approve Jeffersonville's Sewer System Capacity, Management, Operation and Maintenance Program in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

31. Jeffersonville shall implement its approved Sewer System Capacity, Management, Operation and Maintenance Program in accordance with Section XIV of this Consent Decree (Review and Approval Procedures).

#### VII. CIVIL PENALTIES

32. No later than thirty (30) Days after the Effective Date, Jeffersonville shall pay a civil penalties in the amounts of \$49,500 to the United States and \$82,500 to the State of Indiana for violations as alleged by the United States and the State of Indiana in the Complaint through the Date of Lodging of the Consent Decree. In lieu of the \$82,500 payment to the State of

Indiana, Defendant may pay a civil penalty of \$8,250 to the State of Indiana and perform a State Supplemental Environmental Project in accordance with Paragraphs 45 through 47 of this Consent Decree.

33. Civil Penalty Payment to the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Jeffersonville upon entry of the Consent Decree by the Financial Management Unit of the U.S. Attorney's Office for the Southern District of Indiana. Any EFTs received at the DOJ lockbox bank after 3:00 PM Eastern Time will be credited on the next business day. At the time of payment, Jeffersonville shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number and DOJ case number 90-5-1-1-08723) to the Plaintiffs in accordance with Section XIII (Notices and Submissions) of this Decree.

34. Civil Penalty Payment to the State. Payment to the State shall be made by a check made payable to "Indiana Department of Environmental Management Special Fund," delivered to:

Indiana Department of Environmental Management  
Cashier's Office – Mail Code 50-10C  
100 N. Senate Avenue  
Indianapolis, IN 46207-7060

At the time of payment, Jeffersonville shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference the above-captioned case name and civil action number and DOJ case number 90-5-1-1-08723) to the Plaintiffs in accordance with Section XIII (Notices and Submissions) of this Consent Decree.



35. Late Payments. In accordance with the Debt Collection Act of 1982, 31 U.S.C. § 3717, and 40 C.F.R. § 13.11, Jeffersonville shall be subject to the payment of interest and late charges in the event of late payment of the civil penalties required to be paid under Paragraph 32 or stipulated penalties required to be paid under Section IX of this Consent Decree (Stipulated Penalties).

a. Jeffersonville shall pay interest on any unpaid penalties that are due and payable to the United States under Paragraph 32 or Section IX of this Consent Decree (Stipulated Penalties) at the rate of the current value of funds to the U.S. Treasury (i.e., the Treasury tax and loan account rate), accruing on the date payment was due and payable beginning on the thirty-first (31<sup>st</sup>) Day after payment was due, unless paid prior to that date. Jeffersonville shall pay interest on any unpaid penalties that are due and payable to the State under Paragraph 32 or Section IX of this Consent Decree (Stipulated Penalties) at the rate established by Ind. Code Section 24-4.6-1-101, accruing on the date payment was due and payable beginning on the thirty-first (31<sup>st</sup>) Day after payment was due, unless paid prior to that date.

b. In addition to the previous charge, Jeffersonville shall pay late fees on any unpaid penalty amount still due and payable more than ninety (90) Days past the date due. Late fees shall accrue at the rate of six (6) percent per annum and shall be assessed monthly. Interest and handling charges as provided for in this Paragraph shall be tendered along with any late penalty payments in the manner specified above. The Plaintiffs shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty, stipulated penalty, interest, or late payment costs or fees.

**VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

**A. Federal Supplemental Environmental Project**

36. Defendant shall implement the Federal Supplemental Environmental Project ("Federal SEP") described in Appendix E in accordance with all provisions of this Section VIII of this Consent Decree (Supplemental Environmental Projects) and Appendix E. Defendant shall complete the Federal SEP by October 31, 2010, in accordance with the schedule set forth in Appendix E. The Federal SEP shall include a constructed wetland storm water treatment system that will consist of two separate constructed wetland areas and a vegetative buffer strip at the River Ridge Commerce Center in the City of Jeffersonville for the purpose of reducing the velocity of and removing pollutants from stormwater flow to Lentzier Creek.

37. Defendant is responsible for the satisfactory completion of the Federal SEP in accordance with the requirements of this Decree and Appendix E. Defendant may use contractors or consultants in planning and implementing the Federal SEP.

38. With regard to the Federal SEP, Defendant certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA's approval of the Federal SEP is complete and accurate and that Defendant in good faith estimates that the cost to implement the Federal SEP, exclusive of inventory on hand, overhead, additional employee time and salary, administrative expenses, legal fees, and contractor oversight costs, is \$130,000;
- b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the Federal SEP by any federal, state, or local law or regulation and is not required to

perform or develop the Federal SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;

c. that the Federal SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. that Defendant has not received and will not receive credit for the Federal SEP in any other enforcement action; and

e. that Defendant will not receive any reimbursement for any portion of the Federal SEP from any other person.

39. Federal SEP Completion Report.

a. Within thirty (30) Days after the date set for completion of the Federal SEP, Defendant shall submit a Federal SEP Completion Report to the United States and the State, in accordance with Section XIII of this Consent Decree (Notices and Submissions). The Federal SEP Completion Report shall contain the following information:

- i. a detailed description of the Federal SEP as implemented;
- ii. a description of any problems encountered in completing the Federal SEP and the solutions thereto;
- iii. an itemized list of all eligible Federal SEP costs expended;
- iv. certification that the Federal SEP has been fully implemented pursuant to the provisions of this Decree; and
- v. a description of the environmental and public health benefits resulting from implementation of the Federal SEP (with a quantification of the benefits and pollutant reductions, if feasible).



40. U.S. EPA may, in its sole discretion, require information in addition to that described in the preceding Paragraph, in order to evaluate Defendant's completion report.

41. After receiving the Federal SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the Federal SEP. If Defendant has not completed the Federal SEP in accordance with this Consent Decree, stipulated penalties may be assessed under Section IX of this Consent Decree (Stipulated Penalties).

42. Disputes concerning the satisfactory performance of the Federal SEP and the amount of eligible Federal SEP costs may be resolved under Section XI of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

43. Each submission required under this Section shall be signed by an official with knowledge of the Federal SEP and shall bear the certification language set forth in Paragraph 92.

44. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the Federal SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action, United States v. City of Jeffersonville, taken on behalf of the U.S. Environmental Protection Agency under the federal Clean Water Act."

**B. State Supplemental Environmental Project**

45. In lieu of payment of the \$82,500 civil penalty to the State in accordance with Paragraph 34, Jeffersonville may instead (a) pay the sum of \$8,250 to the State as a civil penalty within thirty (30) Days after the Effective Date of this Consent Decree and (b) perform a State Supplemental Environmental Project ("State SEP") in accordance with Appendix E to this Consent Decree. The State SEP shall consist of the construction of pervious pavers and a rain

garden at Preservation Park located in the City of Jeffersonville, for the purpose of eliminating stormwater runoff from Preservation Park. Jeffersonville shall use a 1.6:1 ratio in determining what portion of the civil penalty payable to the State shall be offset by the State SEP, which means that Jeffersonville shall expend \$1.60 on the State SEP in order to offset \$1.00 of civil penalty payable to the State. Therefore, Jeffersonville shall expend \$118,050 in order to offset 90% of the \$82,500 civil penalty payable to the State. Jeffersonville estimates in good faith that the cost to implement the State SEP is not less than \$118,050.

46. Jeffersonville shall complete the State SEP within 90 Days of the Effective Date. Every year, on the anniversary of the Effective Date of this Consent Decree, and until completion of the State SEP in accordance with this Consent Decree and Appendix E, Jeffersonville shall submit a milestone report to IDEM, detailing Jeffersonville's progress on implementing the State SEP in accordance with this Consent Decree. In performing the State SEP, Jeffersonville shall comply with all applicable federal, state, and local laws and regulations, and shall obtain and comply with any necessary licenses or permits. Within thirty (30) Days of completion of the State SEP, Jeffersonville shall submit to IDEM an itemized list, along with supporting documentation, of costs incurred in performing the State SEP. In the event that the total cost of the State SEP is less than \$118,050, Jeffersonville shall pay the balance of the civil penalty that is not offset by the State SEP, to be calculated by using the 1.6:1 ratio described in Paragraph 45, plus interest at the rate established by Indiana Code 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the Effective Date of the Consent Decree. Payment shall be made within fifteen (15) Days of receipt of notice from IDEM that payment is due.



47. In the event that Jeffersonville fails to complete the State SEP in accordance with this Consent Decree and Appendix E, Jeffersonville shall pay the entire balance of the civil penalty, totaling \$74,250 plus interest at the rate established by Indiana Code 24-4.6-1-101. Interest on the balance of the civil penalty shall be paid from the Effective Date of this Consent Decree. Payment shall be made within fifteen (15) Days of receipt of notice from IDEM that payment is due.

**IX. STIPULATED PENALTIES**

48. Jeffersonville shall pay for stipulated penalties to the Plaintiffs in the amounts set forth in this Section for failure to comply with the requirements of this Consent Decree as specified below, unless the court finds under Section XI (Dispute Resolution) that Jeffersonville did not fail to comply with the requirements of this Consent Decree, or unless excused under Section X (Force Majeure). Stipulated penalties shall be allocated between the Plaintiffs as provided in Paragraph 66. As used in this Section, "compliance" or "to comply" includes meeting all requirements of this Consent Decree and any applicable permit, as well as completing the activities under this Consent Decree, or any work plan or other plan approved under this Consent Decree, and within the specified time schedules established by and approved under this Consent Decree.

49. Failure to Comply with Effluent Limits. Stipulated penalties for any noncompliance with a numerical effluent limit imposed by Jeffersonville's NPDES Permit shall accrue as follows:



<u>Parameter</u>	<u>Stipulated Penalty</u>
Daily concentration or mass limits	\$1,750 per Day per parameter
Weekly average concentration or mass limits	\$3,500 per week per parameter
Monthly average concentration or mass limits	\$4,500 per month per parameter

50. Delay in Eliminating CSO Outfall 006, CSO Outfall 007, or CSO Outfall 012:

The following stipulated penalties shall accrue for failure to meet the schedule set forth for eliminating CSO Outfall 006, CSO Outfall 007, or CSO Outfall 012, for each such failure:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

51. Failure to Maximize Flow and Storage in the Sewer System to Minimize Wet

Weather CSO Discharges: The following stipulated penalty shall accrue if a Wet Weather CSO Discharge occurs from any CSO Outfall in the Sewer System as a result, in whole or in part, of Jeffersonville's failure to maximize storage in the Sewer System as required by Consent Decree Subsection VI.C:

Stipulated Penalty per Day, per Wet Weather CSO: \$1,750

52. Failure to Maximize Treatment at the WWTP Prior to Wet Weather CSO

Discharges: The following stipulated penalties shall accrue if a Wet Weather CSO Discharge or Discharges occur from CSO Outfall 018 (Tenth Street Pump Station) when the treatment flow requirements set forth in Paragraphs 16.a or 17 are not met.

Stipulated Penalty per Day: \$4,000

53. Failure to Increase Capacity of Tenth Street Pump Station: The following stipulated penalties shall accrue in the event that Jeffersonville fails to increase the physical capacity of the Tenth Street Pump Station in accordance with Subparagraph 16.b:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,750 per Day per violation
31 <sup>st</sup> through 60 <sup>th</sup> Day of violation	\$3,000 per Day per violation
After 60 Days of violation	\$5,000 per Day per violation.

54. Sanitary Sewer Discharges: The following stipulated penalties shall accrue per Day for any SSD:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd Day of violation	\$3,000 per Day per violation
4th to 10th Day of violation	\$4,500 per Day per violation
After 10 Days of violation	\$12,000 per Day per violation.

55. Dry Weather CSO Discharges: The following stipulated penalties shall accrue per Day for any Dry Weather CSO Discharge that occurs more than 24 hours after a Wet Weather Event:

<u>Period of Noncompliance</u>	<u>Stipulated Penalty</u>
1st to 3rd Day of continuous CSO Discharge	\$2,500 per Day per CSO Discharge
4th to 10th Day of continuous CSO Discharge	\$4,000 per Day per CSO Discharge
After 10 Days of continuous CSO Discharge	\$7,500 per Day per CSO Discharge.

56. Failure to Comply with the Requirements to Develop and/or Submit an LTCP: The following stipulated penalties shall accrue for any failure to timely submit any of the deliverables

that precede the LTCP, or to submit the LTCP itself, or any required revisions thereto, in accordance with the schedule set forth in Appendix A and in accordance with the requirements of Subsection V.I.E and Appendix B to this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,500 per Day per violation
31st to 60th Day of violation	\$3,000 per Day per violation
After 60 Days of violation	\$4,500 per Day per violation.

57. Failure to Implement the Requirements of the Approved LTCP Report: The following stipulated penalty shall accrue for the failure to timely implement any requirement in the approved LTCP Report:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,750 per Day per violation
31st to 60th Day of violation	\$3,000 per Day per violation
After 60 Days of violation	\$5,000 per Day per violation.

58. Failure to Comply with Requirements to Develop and/or Submit a Sewer System Capacity, Management, Operation and Maintenance Program: The following stipulated penalties shall accrue for failure timely to develop and/or submit a Sewer System Capacity, Management, Operation and Maintenance Program in accordance with Subsection V.I.F:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.



59. Failure to Implement the Requirements of the Approved Sewer System Capacity,

Management, Operation and Maintenance Program: The following stipulated penalty shall accrue for the failure to implement any requirement in the approved Sewer System Capacity,

Management, Operation and Maintenance Program:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

60. Failure to Revise CSOOP: The following stipulated penalty shall accrue for the failure timely to revise the CSOOP as required by Section VI.B of the Consent Decree:

Stipulated Penalty per Day: \$750

61. Failure to Implement Provisions of the CSOOP: The following stipulated penalty shall accrue for the failure to implement each provision of the CSOOP, in any month, as required by Consent Decree Subsection VI.B:

Stipulated Penalty per provision per month: \$2,000

62. Failure to Install a Manhole at CSO Outfall 010 (Walnut Street and East Riverside Drive) in Accordance with Paragraph 15 of this Consent Decree: The following stipulated penalty shall accrue for the failure to timely install a manhole at the discharge line for CSO Outfall 010 in accordance with the requirements of Paragraph 15 of this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$1,500 per Day per violation
After 60 Days of violation	\$2,000 per Day per violation.

63. Noncompliance with Reporting Requirements: Except as otherwise provided by this Section IX (Stipulated Penalties), the following stipulated penalties shall accrue for each noncompliance with any requirement that Jeffersonville submit to the Plaintiffs any work plan, report, or any other submission under this Consent Decree:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

64. SEP Compliance: If Defendant fails to satisfactorily complete the SEP by the deadline set forth in Section VIII of this Consent Decree (Supplemental Environmental Projects), Defendant shall pay stipulated penalties for each Day for which it fails to satisfactorily complete the SEP, as follows:

<u>Period of noncompliance</u>	<u>Stipulated Penalty</u>
1st to 30th Day of violation	\$1,000 per Day per violation
31st to 60th Day of violation	\$2,000 per Day per violation
After 60 Days of violation	\$3,000 per Day per violation.

In addition, if the total amount expended on completing the Federal SEP is less than \$130,000, Jeffersonville shall be subject to a stipulated penalty equal to difference between \$130,000 and

the amount actually expended. Penalties under this Paragraph shall be paid upon demand, in accordance with the provisions of Paragraph 66.

65. Any Other Violation of this Consent Decree: The following stipulated penalty shall accrue for any other violation of this Consent Decree:

Stipulated Penalty: \$1,000 per Day per violation

66. Either the United States, or the State, or both may elect to demand stipulated penalties under this Section; however, the United States and the State shall consult with each other before making any demand. Where both sovereigns demand stipulated penalties, any such penalties determined to be owing shall be paid fifty (50) percent to the United States and fifty (50) percent to the State. Where only one Plaintiff demands stipulated penalties, the entire amount of stipulated penalties determined to be owing shall be payable to that sovereign. In no case shall the determination by one sovereign not to seek stipulated penalties preclude the other sovereign from seeking stipulated penalties, as otherwise provided for by, and consistent with, the terms of this Consent Decree. A decision by the United States or the State to waive, in whole or in part, stipulated penalties otherwise due under this Section shall not be subject to judicial review. Unless Jeffersonville invokes dispute resolution as provided in Section XI below, Jeffersonville shall pay stipulated penalties assessed by the United States or the State of Indiana within sixty (60) Days of such Plaintiff's written notice that stipulated penalties are due and owing.

67. All stipulated penalties shall begin to accrue on the Day after the performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Nothing herein shall



prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, except that when two or more violations are based upon the same noncompliance, the higher stipulated penalty shall apply.

68. Penalty Accrual During Dispute Resolution. Stipulated penalties shall continue to accrue during any dispute resolution, with interest on accrued penalties payable and calculated at the rate established by the Secretary of the Treasury, pursuant to 28 U.S.C. § 1961 (for penalties payable to the United States) and at the rate established pursuant to Ind. Code Section 24-4.6-1-101 (for penalties payable to the State), but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to the Court, accrued penalties determined to be owing, together with accrued interest, shall be paid to the Plaintiffs within thirty (30) Days of the effective date of the agreement or the receipt of U.S. EPA's decision or order.

b. If the dispute is appealed to the District Court and the Plaintiffs prevail in whole or in part, Jeffersonville shall, within sixty (60) Days of receipt of the District Court's decision or order, pay all accrued penalties determined by the Court to be owing, together with accrued interest, except as provided in Subparagraph c.

c. If the District Court's decision is appealed by any Party and the Plaintiffs prevail in whole or in part, Jeffersonville shall, within thirty (30) Days of receipt of the Court of Appeals' decision, pay all accrued penalties determined to be owing to the Plaintiffs, together with accrued interest.

69. Payment of Stipulated Penalties to the United States.

a. Payment. Stipulated penalties payable to the United States shall be paid by certified or cashier's check in the amount due, payable to the "Treasurer, United States of America," referencing the above-captioned case name and civil action number and DOJ No. 90-5-1-1-08723 and shall be delivered to the Financial Litigation Unit of the Office of the United States Attorney for the Southern District of Indiana, at the following address:

Financial Litigation Unit  
Office of the United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, IN 46204-3048

b. Late Payment. Should Jeffersonville fail to pay stipulated penalties and accrued interest payable to the United States in accordance with the terms of this Consent Decree, the United States shall be entitled to collect interest and late payment costs and fees as set forth in Paragraph 35 (Late Payments), together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

70. Payment of Stipulated Penalties to the State.

a. Payment. Stipulated penalties payable to the State shall be paid by certified or cashier's check in the amount due, payable to the "Indiana Department of Environmental Management Special Fund," delivered to:

Indiana Department of Environmental Management  
Cashier's Office – Mail Code 50-10C  
100 N. Senate Avenue  
Indianapolis, IN 46207-7060

b. Late Payment. Should Jeffersonville fail to pay stipulated penalties and accrued interest payable to the State in accordance with the terms of this Consent Decree, the State shall

be entitled to collect interest and late payment costs and fees as set forth in Paragraph 35 (Late Payments) together with the costs (including attorneys fees) incurred in any action necessary to collect any such stipulated penalties, interest, or late payment costs or fees.

71. Jeffersonville's payment of stipulated penalties under this Section shall be in addition to any other rights or remedies available to the United States and the State by reason of Jeffersonville's failure to comply with any requirement of this Consent Decree, applicable laws or regulations, and applicable permits.

#### X. FORCE MAJEURE

72. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Jeffersonville, its agents, consultants and contractors, or any entity controlled by Jeffersonville that delays or prevents the performance of any obligation under this Consent Decree despite Jeffersonville's best efforts to fulfill the obligation. "Best efforts" include using best efforts to anticipate any potential force majeure event and to address the effects of any such event (a) as it is occurring and (b) after it has occurred, such that the delay is minimized to the greatest extent practicable. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered "Force Majeure" events. In addition, failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Consent Decree, or failure of Jeffersonville to approve contracts, shall not, in any event, be considered "Force Majeure" events.

73. When Jeffersonville knows or if Jeffersonville should have known, by the exercise



of reasonable diligence, of an event that might delay completion of any requirement of this Consent Decree, whether or not the event is a Force Majeure event, Jeffersonville shall notify U.S. EPA and IDEM, in writing, within thirty (30) Days after Jeffersonville first knew, or in the exercise of reasonable diligence under the circumstances, should have known of such event. The notice shall indicate whether Jeffersonville's claim that the delay should be excused due to a Force Majeure event. The notice shall describe the basis for Jeffersonville's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Jeffersonville shall adopt all reasonable measures to avoid or minimize such delay. Failure to give such notice shall preclude Jeffersonville from asserting any claim of Force Majeure as to the event in question, and shall be a waiver of Jeffersonville's right to obtain an extension of time for its obligations based on such event.

74. Jeffersonville shall have the burden of proving, by a preponderance of the evidence, that each event described in the preceding Paragraph was a Force Majeure event; that they gave the notice required by the preceding Paragraph; that they took all reasonable steps to prevent or minimize any delay caused by the event; that any period of delay that they claim was attributable to the Force Majeure event was caused by that event; and that the amount of additional time they are requesting is necessary to compensate for the delay caused by that event.

75. If the Plaintiffs find that a delay in performance is, or was, caused by a Force Majeure event, the Parties shall extend the time for performance, in writing, in accordance with paragraph 78, below, for a period to compensate for the delay resulting from such event, and stipulated penalties shall not be due for such period.

76. If the Plaintiffs do not find that a Force Majeure event has occurred, or do not agree with Jeffersonville concerning the extent of time sought, the position of the Plaintiffs shall be binding, unless Jeffersonville invokes Dispute Resolution under Section XI of this Consent Decree. In any such dispute, Jeffersonville bears the burden of proof described in Paragraph 74, above.

77. Compliance with a requirement of this Consent Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. Jeffersonville shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

78. If the Parties agree that Jeffersonville could not have prevented or mitigated any delay, or anticipated delay, attributable to a Force Majeure event by the exercise of due diligence, the Parties shall stipulate to an extension of time for Jeffersonville's performance of the affected compliance requirement by a period not exceeding the delay actually caused by such event. In such circumstances, the appropriate modification shall be made pursuant to Section XXI of the Consent Decree (Modification). In the event the Parties cannot agree, the matter shall be resolved in accordance with Section XI of this Consent Decree (Dispute Resolution). An extension of time for performance of the obligations affected by a Force Majeure event shall not, of itself, extend the time for performance of any other obligation.

#### XI. DISPUTE RESOLUTION

79. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising



under or with respect to this Consent Decree. However, such procedures shall not apply to actions by the Plaintiffs to enforce obligations of Jeffersonville that have not been disputed in accordance with this Section.

80. Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed thirty (30) Days from the time Jeffersonville sends the Plaintiffs a written Notice of Dispute in accordance with Section XIII of this Consent Decree (Notices and Submissions), unless that period is modified by written agreement. Such Notice of Dispute shall state clearly the matter in dispute. Jeffersonville's failure to submit a Notice of Dispute within fourteen (14) Days from the date upon which the issue in dispute first arises waives its right to invoke dispute resolution under this Section with respect to such dispute.

81. Formal Dispute Resolution.

- a. If the Parties cannot resolve a dispute by informal negotiations pursuant to the preceding Paragraph, then the position advanced by the Plaintiffs shall be considered binding unless, within fifteen (15) Days after the conclusion of the informal negotiation period, Jeffersonville invokes formal dispute resolution procedures by serving on the Plaintiffs, in accordance with Section XIII of this Consent Decree (Notices and Submissions), a written Statement of Position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, together with a statement indicating whether formal dispute resolution should proceed upon the administrative record.
- b. Within thirty (30) Days after receipt of Jeffersonville's Statement of Position, the Plaintiffs shall serve on Jeffersonville their Statement of Position, including any supporting



factual data, analysis, opinion or documentation, together with a statement indicating whether formal dispute resolution should proceed upon the administrative record. Within fifteen (15) Days after receipt of the Plaintiffs' Statement of Position, Jeffersonville may submit a Reply.

c. If there is disagreement as to whether dispute resolution should proceed upon the administrative record, the Parties shall follow the procedures determined by the Plaintiffs to be applicable. However, if Jeffersonville ultimately appeals to the Court to resolve the dispute, the Court shall determine the applicable standard and scope of review, in accordance with Subparagraph 82.c below.

d. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. That record, together with other appropriate records maintained by U.S. EPA or submitted by Jeffersonville, shall constitute the administrative record upon which the matter in dispute is to be resolved, when such resolution proceeds on the administrative record under this Section.

82. Resolution of Disputes.

a. The Director of the Water Division in U.S. EPA Region 5 shall issue a final decision resolving the matter in dispute. Where the dispute pertains to the performance of the Compliance Program under Section VI of this Consent Decree, or is otherwise accorded review on the administrative record under applicable principles of administrative law, the decision shall be upon the administrative record maintained by U.S. EPA pursuant to Subparagraph 81.d. The decision of the Water Division Director shall be binding upon Jeffersonville, subject only to the right to seek judicial review, in accordance with Subparagraph 82.b.

b. The decision issued by U.S. EPA under Subparagraph 82.a. shall be reviewable by this Court upon a motion filed by Jeffersonville and served upon the Plaintiffs within twenty (20) Days of receipt of U.S. EPA's decision. In addition to containing the supporting factual data, analysis, opinion, and documentation upon which Jeffersonville relies, the motion shall describe the history of the matter in dispute, the relief requested, and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree, as well as Jeffersonville's position on whether the dispute should be resolved on the administrative record.

c. In any judicial proceeding pursuant to Subparagraph 82.b that concerns the performance of the Compliance Program under Section VI of this Consent Decree (Compliance Program), or that is otherwise accorded review on the administrative record under applicable principles of administrative law, Jeffersonville shall have the burden of demonstrating that the decision of the Water Division Director is arbitrary and capricious or otherwise not in accordance with law. The United States and the State of Indiana shall have forty-five (45) Days to file a response to Jeffersonville's petition. Judicial review of the Water Division Director's decision shall be on the administrative record compiled in accordance with Subparagraph 81.d. Judicial review for all other disputes shall be governed by applicable principles of law.

83. The invocation of dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Jeffersonville under this Consent Decree, not directly in dispute, unless the Plaintiffs agree or the Court orders otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 68 (Penalty Accrual During Dispute Resolution). In the event that Jeffersonville does not prevail on



the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX of this Consent Decree (Stipulated Penalties).

## XII. REPORTING REQUIREMENTS

84. Semi-Annual Reporting. On July 1, 2010, and every six (6) months thereafter until termination of this Consent Decree, Jeffersonville shall submit to Plaintiffs at the address provided in Section XIII of the Consent Decree (Notices and Submissions) a Semi-Annual Report that contains all information required in Appendix D or otherwise expressly specified by Plaintiffs as necessary to determine Jeffersonville's compliance with the requirements of this Consent Decree.

85. In addition to the information identified in Appendix D, the Semi-Annual Reports shall include a description of any non-compliance with the requirements of this Consent Decree and an explanation of the violation's likely cause and duration, and of the remedial steps taken, or to be taken, to prevent or minimize such violation. If the cause of the violation cannot be fully explained at the time the report is due, Jeffersonville shall so state in the report. Jeffersonville shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) Days of the Day Jeffersonville becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Jeffersonville of its obligation to provide the notice required by Section X of this Consent Decree (Force Majeure).

86. The Semi-Annual Reports shall be certified in accordance with the "Certification Language" set forth in Paragraph 92 of Section XIII of the Consent Decree (Notices and Submissions).



87. Jeffersonville shall not object to the accuracy, authenticity, and/or admissibility into evidence of any certified Semi-Annual Report in any proceeding to enforce this Consent Decree.

88. The reporting requirements of this Consent Decree do not relieve Jeffersonville of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or requirement.

89. Any information provided pursuant to this Consent Decree may be used by the United States and Indiana in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

### XIII. NOTICES AND SUBMISSIONS

90. Unless otherwise specified herein, whenever notifications, reports, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

To the U.S. Department of Justice:

Chief, Environmental Enforcement Section  
U.S. Department of Justice -- DOJ No. 90-5-1-1-08723  
P.O. Box 7611  
Washington, D.C. 20044-7611

and

To U.S. EPA:

Chief, Water Enforcement and Compliance Assurance Branch (WCC-15J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

and

Regional Counsel (C-14J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

To the State:

To the Indiana Attorney General:

Chief, Environmental Section  
Office of the Attorney General  
Indiana Government Center South  
5<sup>th</sup> Floor  
402 West Washington Street  
Indianapolis, IN 46204

and

To IDEM:

Chief, Compliance Branch  
Office of Water Quality  
Indiana Department of Environmental Management  
100 North Senate Street  
P.O. Box 6015  
Indianapolis, IN 46206

and

Chief, Enforcement Section  
Office of Legal Counsel  
Indiana Department of Environmental Management  
100 North Senate Street  
P.O. Box 6015  
Indianapolis, IN 46206

To Jeffersonville:

Mayor  
City of Jeffersonville  
City Hall  
500 Quartermaster Court  
Jeffersonville, IN 47130

Sanitary Sewer Board  
City of Jeffersonville  
City Hall  
500 Quartermaster Court  
Jeffersonville, IN 47130

91. Notices and submissions provided pursuant to this Section shall be deemed effective upon receipt, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing. In addition to the other reports required by this Consent Decree, if Jeffersonville violates any requirement of this Consent Decree or its NPDES Permit, Jeffersonville shall notify the Plaintiffs of such violation and its likely duration in writing within fourteen (14) Days of the Day Jeffersonville first becomes aware of the violation, with an explanation of the violations likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Jeffersonville shall include a statement to that effect in the report. Jeffersonville shall immediately investigate to determine the cause of the violation, and then shall submit an amendment to the report, including a full explanation of the cause of the violation,



within thirty (30) Days of the Day Jeffersonville becomes aware of the cause of the violation.

92. Each notice or submission made by Jeffersonville under this Consent Decree shall be signed by an official of the submitting Party and shall include the following "Certification Language":

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my inquiry of those individuals immediately responsible for obtaining the information, that I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

93. Jeffersonville shall retain all underlying documents from which it has compiled any report or other submission required by this Consent Decree until five years after termination of the Decree.

94. Any information provided pursuant to this Consent Decree may be used by the Plaintiffs in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

#### XIV. REVIEW AND APPROVAL PROCEDURES

95. Following receipt of any report, plan, or other submission by Jeffersonville under this Consent Decree, the Plaintiffs may do one of the following, in writing: (i) approve all of or any portion of the submission; (ii) approve all or part of the submission upon specified conditions; (iii) disapprove all of or any portion of the submission, notifying Jeffersonville of deficiencies in the submission and granting Jeffersonville additional time within which to correct

the deficiencies; (iv) modify the submission to correct deficiencies; or (v) reject all of or any portion of the submission.

96. In the event that U.S. EPA and IDEM approve a complete submission, Jeffersonville shall proceed to take the actions identified in the report, plan, or other submission beginning within fourteen (14) Days following U.S. EPA's and IDEM's approval.

97. In the event U.S. EPA and IDEM either approve specifically identified portions of the submission, or approve all or a specifically identified portion of the submission with conditions, Jeffersonville shall proceed to take the actions identified in the approved portion of the report, plan, or other submission, or portion thereof, in accordance with the applicable conditions, beginning within fourteen (14) Days following receipt of the conditional approval.

98. In the event that U.S. EPA and/or IDEM disapprove all or a portion of any submission, Jeffersonville shall revise the submission to address all of U.S. EPA and/or IDEM's written comments. Jeffersonville shall resubmit the revised report, plan, or other submission to the Plaintiffs within thirty (30) Days of receipt of the Plaintiffs' comments, unless otherwise provided in this Consent Decree.

99. If Jeffersonville submits a report, plan or other submission that fails to contain all of the required elements set forth in this Consent Decree (including all appendices to the Decree and documents incorporated by reference into the Decree), Jeffersonville shall be deemed to have failed to make the submission. Where this Consent Decree requires a resubmission, if upon resubmission, a report, plan or other submission that has been resubmitted pursuant to a requirement of the Consent Decree is disapproved by U.S. EPA and/or IDEM, either in whole or in part, Jeffersonville shall be deemed to have failed to resubmit such report, plan or other

submission timely and adequately, unless Jeffersonville invokes the Dispute Resolution Procedures set forth in Section XI of the Consent Decree, and U.S. EPA's and/or IDEM's action is overturned pursuant to that Section. In the case of a submission that fails to contain all the required elements, stipulated penalties begin to accrue on the date the submission is due. In the case of a disapproved resubmission, stipulated penalties begin to accrue on the date Jeffersonville receives written notice of disapproval.

**XV. ACCESS TO INFORMATION AND DOCUMENT RETENTION**

100. Commencing on the Date of Lodging of this Consent Decree, Jeffersonville agrees to provide the United States and its representatives (including U.S. EPA and its contractors and consultants), and the State and its representatives (including IDEM and its contractors and consultants), access at all reasonable times to all areas and facilities under Jeffersonville's control, and to allow such representatives to move about, without restriction, for the purposes of conducting any any activity related to this Consent Decree, including to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Jeffersonville or its representatives, contractors, or consultants; and
- d. assess Jeffersonville's compliance with this Consent Decree.

101. This Consent Decree in no way limits or affects any right of entry and inspection held by the United States or the State pursuant to applicable federal or state laws, regulations, or permits.



102. Jeffersonville shall provide to the Plaintiffs, upon request, copies of all documents and information within its possession or control (or that of its contractors or agents) relating to compliance with this Consent Decree. Jeffersonville shall also make available to Plaintiffs its employees, agents, or representatives with knowledge of relevant facts concerning its compliance with this Consent Decree.

a. Jeffersonville may assert business confidentiality claims covering part or all of the documents or information submitted to the Plaintiffs under this Consent Decree, to the extent permitted by and in accordance with 40 C.F.R. Part 2. Documents or information submitted to U.S. EPA and determined to be confidential by U.S. EPA shall be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to U.S. EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

b. Jeffersonville may assert that certain documents and information are privileged under the attorney-client privilege or any other privilege recognized by applicable law. If Jeffersonville asserts such a privilege in lieu of providing documents, Jeffersonville shall provide the Plaintiffs with the following: (i) the title of the document; (ii) the date of the document; (iii) the name and title of the author of the document; (iv) the name and title of each addressee and recipient; (v) a description of the contents of the document; and (vi) the privilege asserted by Jeffersonville. No documents or information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

103. Jeffersonville agrees to preserve, during the pendency of this Consent Decree and for at least one year after its termination, at least one legible copy (either in electronic or hard

copy form) of all final documents in its possession, custody or control that relate to the performance of its obligations under this Consent Decree.

#### XVI. FAILURE OF COMPLIANCE

104. The Plaintiffs do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Jeffersonville's compliance with any aspect of this Consent Decree will result in compliance with the provisions of the CWA, 33 U.S.C. § 1251 *et seq.*, applicable state law and regulations, or its NPDES Permit. Notwithstanding the Plaintiffs' review and approval of any documents submitted by Jeffersonville pursuant to this Consent Decree, Jeffersonville shall remain responsible for compliance with the terms of the CWA, applicable state law and regulations, the NPDES Permit, and this Consent Decree. The pendency or outcome of any proceeding concerning issuance, reissuance, or modification of any NPDES permit shall neither affect nor postpone Jeffersonville's duties and obligations as set forth in this Consent Decree.

#### XVII. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

105. Effective upon the Date of Entry of the Consent Decree, and in consideration of the civil penalty payments that shall be made and the injunctive relief that shall be performed under this Consent Decree, except as expressly set forth in Paragraph 107 (Reservation of Rights), the United States covenants not to bring any administrative or civil judicial action for the violations of Sections 301 or 402 of the CWA alleged in the Complaint filed in this matter, and the State of Indiana covenants not to bring any administrative or civil judicial action for the violations of Sections 301 or 402 of the CWA and Indiana law, as alleged in the Complaint. Entry of the Consent Decree by the Court shall resolve the United States and the State of



Indiana's civil claims, except as expressly set forth in Paragraph 107 below, for violations of the above-referenced statutory provisions alleged in the Complaint up to and including the Date of Lodging of the Decree.

106. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the State to obtain penalties or injunctive relief under the CWA or applicable State laws or regulations promulgated thereunder, or permit conditions, except as expressly specified herein.

107. Reservation of Rights. Notwithstanding any other provision of this Consent Decree, the United States and the State of Indiana reserve, and this Consent Decree is without prejudice to, all rights against Jeffersonville with respect to all matters other than those expressly included in its Complaint, respectively, including but not limited to the following:

- a. Claims based on a failure by Jeffersonville to meet a requirement of this Consent Decree;
- b. Claims for stipulated penalties, if any, under the terms of this Consent Decree;
- c. Any criminal liability; and
- d. Claims that a Discharge from the Sewer System may pose an imminent and substantial endangerment to health or the environment in accordance with Section 504 of the CWA, 33 U.S.C. § 1364, or equivalent State law provisions.

108. Jeffersonville is responsible for achieving and maintaining complete compliance with all applicable federal, State and local laws, regulations, and permits. Jeffersonville's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits.



109. This Consent Decree does not limit or affect the rights of Jeffersonville, or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Jeffersonville.

110. Performance of the terms of this Consent Decree by Jeffersonville is not conditioned on the receipt of any federal, State or local funds. Application for construction grants, state revolving loan funds, or any other grants or loans, or delays caused by inadequate facility planning or plans and specifications on the part of Jeffersonville shall not be cause for extension of any required compliance date in this Consent Decree.

111. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

112. The Plaintiffs reserve any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein.

113. The United States and the State of Indiana reserve all remedies available to them for violations of the CWA or applicable State laws by Jeffersonville which are not alleged in the Complaint, and for any violations of the CWA or applicable State laws by Jeffersonville which occur after the Date of Lodging of this Consent Decree.

#### XVIII. COSTS

114. The Parties shall each bear their own costs of litigation of this action, including attorneys fees, except as provided in Paragraphs 35.b, 69.b, and 70.b (Late Payments).

#### XIX. EFFECTIVE DATE

115. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

**XX. RETENTION OF JURISDICTION**

116. The Court shall retain jurisdiction of this case until termination of this Consent Decree, for the purpose of enabling any of the Parties to apply to the Court for such further order, direction, or relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XI of this Consent Decree (Dispute Resolution).

**XXI. MODIFICATIONS**

117. This Consent Decree may not be materially amended or modified except by written agreement of the Parties, and approval of this Court, after notice and motion to all Parties. Any material modification of this Consent Decree shall be effective upon approval of the Court. Non-material modifications of the Consent Decree which do not significantly alter the requirements of this Consent Decree may be made in writing by the Parties and shall be effective upon service to all Parties. All modifications, whether material or non-material, shall be deemed an enforceable part of this Consent Decree.

118. Before seeking any modification of this Consent Decree, the Appendices attached to this Consent Decree, or the submittals approved under this Consent Decree, Jeffersonville shall consult with U.S. EPA and IDEM concerning the proposed modification and the scope of public participation to be obtained by Jeffersonville before submission of a request for modification.

119. If the Parties do not agree that modification of this Consent Decree is warranted, Jeffersonville may file a motion seeking modification pursuant to Rule 60(b) of the Federal Rules of Civil Procedure; provided, however, that the United States and the State reserve their rights to

oppose such a motion and to argue that modification is unwarranted. Such a motion for modification by Jeffersonville shall not relieve it of any of its obligations under this Consent Decree, unless the Court orders otherwise, and Jeffersonville shall continue with timely implementation of all measures required by the Decree until the Decree is modified in accordance with Paragraph 117 and any other applicable provisions of the Consent Decree.

## XXII. TERMINATION

120. After Jeffersonville complies with all of its obligations under this Consent Decree, including but not limited to all requirements set forth in Section VI of the Consent Decree (Compliance Program), payment of the civil penalty and all accrued stipulated penalties which Jeffersonville did not successfully challenge under Section XI of the Consent Decree (Dispute Resolution), and after Jeffersonville has achieved continuous compliance with the terms and conditions of its NPDES Permit, the CWA, or applicable State laws, for a period of at least one year, and after Jeffersonville has completed all SEPs in accordance with this Consent Decree, including Appendix E, Jeffersonville may file and serve upon the Plaintiffs a "Motion for Termination of Consent Decree" with supporting documentation demonstrating that the conditions for termination set forth in this Section have been met.

121. The United States and/or the State shall have the right to oppose Jeffersonville's motion for termination. If the United States and/or the State oppose termination of this Consent Decree, Jeffersonville shall have the burden to prove by clear and convincing evidence that the conditions for termination of the Decree have been satisfied. If the United States and/or the State oppose termination, this Consent Decree shall remain in effect pending resolution of the



dispute by the Parties or the Court in accordance with Section XI of the Consent Decree (Dispute Resolution).

#### XXIII. PUBLIC COMMENT

122. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Jeffersonville consents to entry of this Consent Decree without further notice.

#### XXIV. SIGNATORIES/SERVICE

123. Each undersigned representative of Jeffersonville, the State, and the Acting Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

124. This Consent Decree may be signed in counterparts, and such counterpart signature pages shall be given full force and effect.

125. Jeffersonville hereby agrees not to oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States notifies Jeffersonville in writing that it no longer supports entry of the Decree.

126. Jeffersonville hereby agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service

requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXV. INTEGRATION/APPENDICES**

127. This Consent Decree, its Appendices and the LTCP, the revised CSOOP and the CMOM Program that shall be developed hereunder, constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Consent Decree, and supersede all prior agreements and understandings, whether oral or written.

Other than documents mentioned in the preceding sentence, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the terms of this Consent Decree.

128. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A"	Long Term Control Plan Completion Schedule
"Appendix B"	Long Term Control Plan Requirements
"Appendix C"	Flow Metering, Monitoring and Recording Requirements
"Appendix D"	Semi-Annual Report Format
"Appendix E"	Supplemental Environmental Projects

**XXVI. FINAL JUDGMENT**

129. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the State, and Jeffersonville.

The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

**SO ORDERED THIS** 24th **DAY OF** November, 2009 .

A handwritten signature in cursive script, reading "David F. Hamilton", written in dark ink.

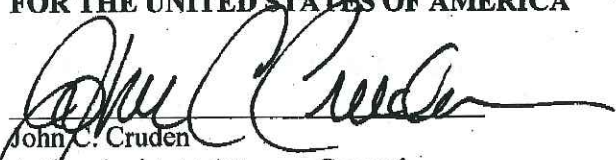
DAVID F. HAMILTON, CHIEF JUDGE  
United States District Court  
Southern District of Indiana



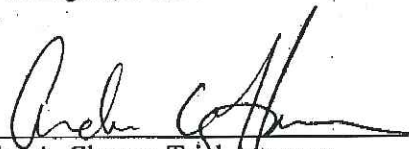
THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

**FOR THE UNITED STATES OF AMERICA**

DATE: \_\_\_\_\_

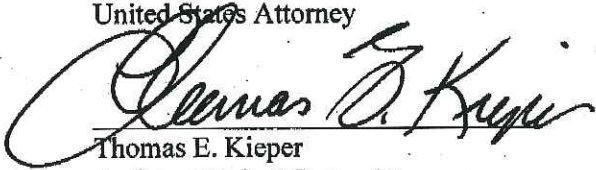
  
John C. Cruden  
Acting Assistant Attorney General  
Environment & Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

DATE: 8-17-09

  
Lisa A. Cherup, Trial Attorney  
Andrew C. Hanson, Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-2802

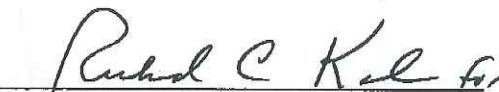
**TIMOTHY M. MORRISON**

United States Attorney

  
Thomas E. Kieper  
Assistant United States Attorney  
Southern District of Indiana  
10 West Market Street, Suite 2100  
Indianapolis, IN 46204-3048


THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

DATE: 9-8-09



Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

DATE: August 31, 2009



*Acting for* Robert A. Kaplan  
Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

DATE: 9/15/09



Adam M. Kushner  
Director  
Office of Civil Enforcement  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20004




THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

**FOR THE STATE OF INDIANA**

**INDIANA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

DATE: 8/21/09

 for Thomas Exterly  
Commissioner


Approved as to form and legality:

DATE: 8/17/2009

  
Beth Admire  
Attorney  
Indiana Department of Environmental Management  
100 North Senate Street  
P.O. Box 6015  
Indianapolis, IN 46206

DATE: 8/25/2009

Indiana Attorney General

  
Chief Counsel for Litigation  
Office of the Attorney General  
Indiana Government Center South  
5<sup>th</sup> Floor  
402 West Washington Street  
Indianapolis, IN 46204

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned United States and the State of Indiana v. City of Jeffersonville, Indiana (S.D. Ind.):

**FOR THE CITY OF JEFFERSONVILLE**

DATE: 8/6/2009

Thomas R. Galen Mayor